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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ARNOLD D. KASSOY, as Trustee, etc

Plaintiff and Respondent,

v.

CAROLE PATTERSON,

Defendant and Appellant.

2d Civil No. B175464  
(Super. Ct. No. 1111396)  
(Santa Barbara County)

Appellant and her two sisters are beneficiaries of a trust established by their brother. A provision in the trust instrument permits the trustee to distribute \$200,000 to each sister for the purchase of a home. At their brother's death, appellant's two sisters already own homes and plan to use the funds to reduce their mortgages. The trial court authorizes the distribution, which appellant challenges on the grounds that, under the terms of the trust, the funds may only be used to purchase a home. We conclude that appellant's interpretation is incorrect and affirm the trial court's order.

*PBP Sisters Trust*

On February 26, 1990, Paul B. Patterson (trustor) established the irrevocable "PBP Sisters Trust," (PBP Trust), funded by life insurance policies. The PBP trust named the trustors' three sisters, Ann A. Patterson, Nina Muriel Patterson and

Carole J. Patterson (appellant) as beneficiaries. Arnold D. Kassoy (respondent) was appointed as trustee.

The PBP trust provided that, at the trustor's death, respondent was to distribute all the income to the sisters in equal shares. He was given the discretion to distribute principal to the sisters for their "proper care, maintenance, support, health and education." The trustee was authorized to distribute 15 percent of the trust estate to each sister to enable her to purchase a home. When the youngest of the then-living sisters reached age 65, the trustee was to distribute 75 percent to the sisters in equal shares. Upon the death of the last sister, the remaining trust estate was to be distributed to two specified charities.

#### *ASEGRA Trust*

In 1990, on the same day that he executed the PBP trust, the trustor also executed the "ASEGRA Trust," a revocable living trust of which his sisters were beneficiaries. The trustor served as trustee of this revocable trust, and respondent was named as successor trustee.

In February 1996, the trustor restated the ASEGRA trust (first restatement) to provide the following cash gifts to his sisters: \$75,000 to Nina; \$150,000 to Ann<sup>1</sup> and \$225,000 to appellant. In 2000, he amended the trust to revoke the cash gifts to his sisters and instead give them percentage interests in the trust remainder (fourth amendment to first restatement).

The trustor died on February 25, 2001, at age 44 from AIDS. Two days before his death he amended the ASEGRA trust (fifth amendment to first restatement) to adjust the percentage interests, leaving 3 percent of the trust estate to Nina; 3 percent to Ann and 20 percent to appellant. Respondent became trustee. In his first accounting for the ASEGRA trust, he estimated that Ann and Nina would receive total distributions of

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<sup>1</sup> We refer to Ann A. Patterson and Nina Muriel Patterson (now Nina Delgado) by first name for the purpose of clarity.

\$59,700 each from the ASEGRA trust and appellant would receive a total distribution of \$398,000.

After the trustor's death, respondent petitioned the court for an order authorizing a principal distribution from the PBP trust to each sister in the amount of \$200,000 (15 percent of the trust estate). Appellant filed an objection, arguing that only she was entitled to the \$200,000 distribution because her sisters already owned residences. She argued that both sisters had received "substantial financial assistance" from the trustor during his lifetime to enable them to purchase their homes. Respondent filed a response to appellant's objections. Attached were declarations of Ann, Nina and respondent, as well as a copy of the ASEGRA trust.

*Declarations of Sisters and Respondent*

Nina and Ann submitted declarations to demonstrate their brother's intent to provide them with housing and to pay off their mortgages. They stated that the trustor had an overriding concern that his sisters all own their own homes "free and clear" of a mortgage. Both sisters recounted that, when the trustor was 12 years of age, their father abandoned the family, taking with him all their financial assets. Their mother had no means to support her four children or to pay the mortgage on their home. Five months later she committed suicide. The trustor "vowed" to become financially secure and provide homes for each of his sisters.

In 1989 Ann and her domestic partner purchased a home in Oakland with funds acquired from their joint incomes and by taking out a large loan. Shortly after the purchase the trustor visited the house and expressed concern about its small size and poor location. In 1990 he executed the PBP Trust, which included the provision authorizing a \$200,000 distribution for each sister for the purchase of a home.

By 1995, the trustor's HIV illness had progressed to AIDS. He told Ann that he wished to see her in a "better" home before he died, and contacted a real estate agent in Oakland to begin searching for such a home. Ann told the trustor that she and her partner could not afford a larger home. The trustor assured her that the PBP trust would provide approximately \$200,000 to allow her to pay off her mortgage. Ann and

her partner purchased a larger home, with the proceeds of their small home plus \$68,000 in cash gifts the trustor had given Ann throughout his lifetime. The trustor assured Ann that she and her sisters would be able to own their home "free and clear" following his death.

In 1994, Nina and her husband wanted to buy a low-cost condominium because they could not afford a more expensive home. The trustor needed to sell his house in Summerland to meet the two-year deadline for a section 1031 tax-deferred exchange. Nina and her husband could not afford a house of this value, so the trustor offered to sell them his house for \$267,000, representing a \$153,000 discount from its assessed value of \$420,000. On many occasions within the five years prior to his death, the trustor discussed his estate plan with Nina. He stated that, upon his death, the PBP trust would provide approximately \$200,000 to each sister so she could own her home "free and clear." Other than the trustor's \$68,000 gift to Ann and his \$153,000 gift to Nina, he made no other cash gifts to either sister during his lifetime.

Respondent declared that he served as legal counsel during the drafting of both trusts, as well as the amendments to the ASEGRA Trust. The first restatement of the ASEGRA trust changed the equal distribution of the trust remainder among the sisters. Unlike her sisters, Carole remained single. The trustor explained to respondent that he was increasing appellant's share to 20 percent to allow her to buy a home, put her on par with her sisters, "and then some." The ASEGRA trust was amended several times to take into account the cash gifts made to Nina and Ann during their lifetimes.

#### *Trial Court's Ruling*

At a hearing on the proposed distribution of the PBP trust, appellant challenged the language authorizing the distribution of trust principal for the purchase of a home. Article III, paragraph B.3. provides in part, ". . . The Trustee shall also distribute to each sister of the Trustor, if the Trustee determines that it is appropriate and in the best interest of each such sister, an amount not to exceed fifteen percent (15 percent) of the value of the trust estate immediately following the Trustor's death, *for the sole purpose of enabling each such sister of the Trustor to purchase a residence.*" (Italics added.) Ann

and Nina allegedly intend to pay down their mortgages with their distribution, while appellant intends to use her distribution to purchase a home. Appellant argued that Ann and Nina were not entitled to a distribution because the funds were not intended to be used to reduce a mortgage.

The trial court issued an order approving distribution of \$200,000 (15 percent of the estate) to each sister. The trial court wrote, "The [PBP] Trust refers to the purchase of 'a' residence, without limitation to a 'first' residence or 'only' residence, or similar restriction. Therefore, the language of the Trust is broad enough to encompass distribution for the purpose of enabling a sister to retire, or pay down the encumbrance on a residence already owned." The court also concluded that the ASEGRA trust and the declarations submitted by respondent demonstrated the trustor's intent to "equalize the financial assistance given during his life to [Ann and Nina] for the purchase of their respective residences . . . ."

#### DISCUSSION

On appeal, appellant does not take issue with the trial court's finding that the trust language does not limit the sister to a purchase of a single or "first" residence. In fact, she acknowledges that this issue is not before us. Appellant argues instead that the word "purchase" cannot be applied to reduce a mortgage. She directs us to the trust language that a distribution may be made "for the sole purpose of enabling each such sister of the Trustor to purchase a residence."

Appellant argues extensively concerning the definitions of the words "purchase" and "acquire." She contends that to "purchase" means to acquire something by paying value and does not refer to reducing the debt of something already acquired. She asserts that "acquiring" real estate does not mean that the property has been acquired free of a mortgage or debt. No argument is raised by either party concerning the no contest clause in the PBP Trust.

#### *Interpretation of the PBP Trust*

The intention of the transferor as expressed in the trust instrument controls the legal effect of the dispositions made in the instrument. (Prob. Code, §§ 21101,

21102, subd. (a).) The paramount rule is that we must give effect to the intention of the testator. (*Estate of Guidotti* (2001) 90 Cal.App.4th 1403, 1407.) Here, appellant asserts that the trustor intended the funds to only be used to make a downpayment on a home, while respondent argues the funds were also intended to reduce the sisters' mortgages.

When language in a trust instrument is uncertain, we may consider extrinsic evidence to ascertain the intent of the trustor. (Prob. Code, § 21102, subd. (c); *Estate of Russell* (1968) 69 Cal.2d 200, 206.) "[E]xtrinsic evidence of the circumstances under which a will is made . . . may be considered by the court in ascertaining what the testator meant by the words used in the will. If in the light of such extrinsic evidence, the provisions are reasonably susceptible of two or more meanings claimed to have been intended by the testator, 'an uncertainty arises upon the face of a will' . . . and extrinsic evidence relevant to prove any of such meanings is admissible . . . ." (*Id.* at p. 212.) A reviewing court must exercise its independent judgment when interpreting an instrument where conflicting inferences may be drawn from uncontroverted evidence. (*Estate of Guidotti, supra*, 90 Cal.App.4th at p. 1406; *Estate of Anderson* (1997) 56 Cal.App.4th 235, 241.) Neither party contends the evidence is conflicting.

After reviewing the declarations of Nina, Ann and respondent and provisions of both trusts, we conclude that the trustor intended that his sisters own homes "free and clear" following his death. This is borne out by the fact that he executed the PBP trust *after* he visited Ann in her newly purchased home. He was apparently distressed by the quality of her home and wished her to obtain a superior residence. To this end, he contacted a real estate agent to begin the search for a new house. As to Nina, the trustor sold her his personal residence at a price that was \$150,000 below its fair market value. He assured both sisters that they would receive \$200,000 at his death, and would be able to pay off their loans. The trustor gave appellant a far larger percentage of the ASEGRA trust: she received a 20-percent share while Nina and Ann each received 3 percent. The trustor appears to have used the revocable ASEGRA trust as an estate-planning tool, taking into account the distributions made in his irrevocable PBP trust. He

executed both trusts on the same day, thus his use of the ASEGRA trust is probative of his intent at the time he executed the PBP trust.

The trustor's family history is compelling and consistent with the declarations of Nina and Ann that the trustor's objective was to ensure his sisters' financial security. By age 44 he had accrued assets sufficient to assure all three sisters of debt free home ownership. Although terminally ill, he continued to make adjustments in his estate planning, with the final amendment made just two days before his death. It was clearly the trustor's intent to permit his sisters to acquire a home by making a downpayment or by reducing a mortgage. Respondent has properly exercised his discretion in making a \$200,000 distribution to all three sisters.

The judgment (order authorizing PBP trust distribution) is affirmed. Costs on appeal are awarded to respondent.

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COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Denise deBellefeuille, Judge  
Superior Court County of Santa Barbara

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Hanson, Bridgett, Marcus, Vlahos & Rudy, David W. Baer and Michael B. McNaughton, for Plaintiff and Appellant.

Barnes & Barnes and Margaret v. Barnes for Defendant and Respondent.